

AMENDED IN SENATE MARCH 23, 2010

**SENATE BILL**

**No. 989**

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**Introduced by Senator Hollingsworth**

February 8, 2010

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~~An act to amend Section 4660 of the Labor Code, relating to workers' compensation.~~ *An act to amend Section 2699 of the Labor Code, relating to employment, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 989, as amended, Hollingsworth. ~~Workers' compensation: permanent disability rating schedule. Labor Code Private Attorneys General Act of 2004.~~

*Existing law, the Labor Code Private Attorneys General Act of 2004, allows aggrieved employees to bring civil actions to recover penalties for violations of the Labor Code if the Labor and Workforce Development Agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions are distributed 75% to the agency to be continuously appropriated for purposes of enforcement and education and 25% to the aggrieved employee, except that if the person does not employ one or more persons, 100% of the penalties are distributed to the agency by continuous appropriation.*

*This bill would require that an employee requesting court approval of the settlement of a civil action brought under the act first serve notice of the request to the agency. This bill would further require that a court award reasonable attorney's fees and costs to the agency in any proceeding brought by the agency to recover its statutory share of the civil penalties awarded to the employee.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

~~Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment.~~

~~Existing law requires the administrative director to formulate a rating schedule for determining the percentage of an injured employee's permanent disability in accordance with certain criteria.~~

~~This bill would make a technical, nonsubstantive change to the above-described provisions.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~no~~<sup>yes</sup>. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 2699 of the Labor Code is amended to  
2     read:

3     2699. (a) Notwithstanding any other provision of law, any  
4     provision of this code that provides for a civil penalty to be  
5     assessed and collected by the Labor and Workforce Development  
6     Agency or any of its departments, divisions, commissions, boards,  
7     agencies, or employees, for a violation of this code, may, as an  
8     alternative, be recovered through a civil action brought by an  
9     aggrieved employee on behalf of himself or herself and other  
10    current or former employees pursuant to the procedures specified  
11    in Section 2699.3.

12    (b) For purposes of this part, "person" has the same meaning  
13    as defined in Section 18.

14    (c) For purposes of this part, "aggrieved employee" means any  
15    person who was employed by the alleged violator and against  
16    whom one or more of the alleged violations was committed.

17    (d) For purposes of this part, "cure" means that the employer  
18    abates each violation alleged by any aggrieved employee, the  
19    employer is in compliance with the underlying statutes as specified  
20    in the notice required by this part, and any aggrieved employee is  
21    made whole.

22    (e) (1) For purposes of this part, whenever the Labor and  
23    Workforce Development Agency, or any of its departments,  
24    divisions, commissions, boards, agencies, or employees, has

1 discretion to assess a civil penalty, a court is authorized to exercise  
2 the same discretion, subject to the same limitations and conditions,  
3 to assess a civil penalty.

4 (2) In any action by an aggrieved employee seeking recovery  
5 of a civil penalty available under subdivision (a) or (f), a court  
6 may award a lesser amount than the maximum civil penalty amount  
7 specified by this part if, based on the facts and circumstances of  
8 the particular case, to do otherwise would result in an award that  
9 is unjust, arbitrary and oppressive, or confiscatory.

10 (f) For all provisions of this code except those for which a civil  
11 penalty is specifically provided, there is established a civil penalty  
12 for a violation of these provisions, as follows:

13 (1) If, at the time of the alleged violation, the person does not  
14 employ one or more employees, the civil penalty is five hundred  
15 dollars (\$500).

16 (2) If, at the time of the alleged violation, the person employs  
17 one or more employees, the civil penalty is one hundred dollars  
18 (\$100) for each aggrieved employee per pay period for the initial  
19 violation and two hundred dollars (\$200) for each aggrieved  
20 employee per pay period for each subsequent violation.

21 (3) If the alleged violation is a failure to act by the Labor and  
22 Workplace Development Agency, or any of its departments,  
23 divisions, commissions, boards, agencies, or employees, there shall  
24 be no civil penalty.

25 (g) (1) Except as provided in paragraph (2), an aggrieved  
26 employee may recover the civil penalty described in subdivision  
27 (f) in a civil action pursuant to the procedures specified in Section  
28 2699.3 filed on behalf of himself or herself and other current or  
29 former employees against whom one or more of the alleged  
30 violations was committed. Any employee who prevails in any  
31 action shall be entitled to an award of reasonable attorney's fees  
32 and costs. Nothing in this part shall operate to limit an employee's  
33 right to pursue or recover other remedies available under state or  
34 federal law, either separately or concurrently with an action taken  
35 under this part.

36 (2) No action shall be brought under this part for any violation  
37 of a posting, notice, agency reporting, or filing requirement of this  
38 code, except where the filing or reporting requirement involves  
39 mandatory payroll or workplace injury reporting.

(h) No action may be brought under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person within the timeframes set forth in Section 2699.3 for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others or initiates a proceeding pursuant to Section 98.3.

(i) Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees. *The court shall award reasonable attorney's fees and costs to the Labor and Workforce Development Agency in any proceeding successfully brought by the agency to recover its share of civil penalties under this act. No attorney's fees or costs shall be awarded against the agency when it is not a prevailing party.*

(j) Civil penalties recovered under paragraph (1) of subdivision (f) shall be distributed to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.

(k) Nothing contained in this part is intended to alter or otherwise affect the exclusive remedy provided by the workers' compensation provisions of this code for liability against an employer for the compensation for any injury to or death of an employee arising out of and in the course of employment.

(l) The superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part. *Parties seeking court approval of a settlement pursuant to this subdivision shall serve notice of the request for court approval upon the Labor and Workforce Development Agency not fewer than 20 calendar days prior to filing the request for approval in the superior court.*

1 (m) This section shall not apply to the recovery of administrative  
2 and civil penalties in connection with the workers' compensation  
3 law as contained in Division 1 (commencing with Section 50) and  
4 Division 4 (commencing with Section 3200), including, but not  
5 limited to, Sections 129.5 and 132a.

6 (n) The agency or any of its departments, divisions,  
7 commissions, boards, or agencies may promulgate regulations to  
8 implement the provisions of this part.

9 *SEC. 2. This act is an urgency statute necessary for the*  
10 *immediate preservation of the public peace, health, or safety within*  
11 *the meaning of Article IV of the Constitution and shall go into*  
12 *immediate effect. The facts constituting the necessity are:*

13 *In order to address the existing economic conditions in*  
14 *California by spurring new job creation, it is necessary for this*  
15 *act to take effect immediately.*

16 ~~SECTION 1. Section 4660 of the Labor Code is amended to~~  
17 ~~read:~~

18 ~~4660. (a) In determining the percentages of permanent~~  
19 ~~disability, account shall be taken of the nature of the physical injury~~  
20 ~~or disfigurement, the occupation of the injured employee, and his~~  
21 ~~or her age at the time of the injury, consideration being given to~~  
22 ~~an employee's diminished future earning capacity.~~

23 ~~(b) (1) For purposes of this section, the "nature of the physical~~  
24 ~~injury or disfigurement" shall incorporate the descriptions and~~  
25 ~~measurements of physical impairments and the corresponding~~  
26 ~~percentages of impairments published in the American Medical~~  
27 ~~Association (AMA) Guides to the Evaluation of Permanent~~  
28 ~~Impairment (5th Edition).~~

29 ~~(2) For purposes of this section, an employee's diminished future~~  
30 ~~earning capacity shall be a numeric formula based on empirical~~  
31 ~~data and findings that aggregate the average percentage of~~  
32 ~~long-term loss of income resulting from each type of injury for~~  
33 ~~similarly situated employees. The administrative director shall~~  
34 ~~formulate the adjusted rating schedule based on empirical data and~~  
35 ~~findings from the Evaluation of California's Permanent Disability~~  
36 ~~Rating Schedule, Interim Report (December 2003), prepared by~~  
37 ~~the RAND Institute for Civil Justice, and upon data from additional~~  
38 ~~empirical studies.~~

39 ~~(c) The administrative director shall amend the schedule for the~~  
40 ~~determination of the percentage of permanent disability in~~

1 accordance with this section at least once every five years. This  
2 schedule shall be available for public inspection and, without  
3 formal introduction in evidence, shall be prima facie evidence of  
4 the percentage of permanent disability to be attributed to each  
5 injury covered by the schedule.

6 (d) The schedule shall promote consistency, uniformity, and  
7 objectivity. The schedule and any amendment thereto or revision  
8 thereof shall apply prospectively and shall apply to and govern  
9 only those permanent disabilities that result from compensable  
10 injuries received or occurring on and after the effective date of the  
11 adoption of the schedule, amendment or revision, as the fact may  
12 be. For compensable claims arising before January 1, 2005, the  
13 schedule as revised pursuant to changes made in legislation enacted  
14 during the 2003-04 Regular and Extraordinary Sessions shall apply  
15 to the determination of permanent disabilities when there has been  
16 either no comprehensive medical-legal report or no report by a  
17 treating physician indicating the existence of permanent disability,  
18 or when the employer is not required to provide the notice required  
19 by Section 4061 to the injured worker.

20 (e) On or before January 1, 2005, the administrative director  
21 shall adopt regulations to implement the changes made to this  
22 section by Chapter 34 of the Statutes of 2004.